

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRENT PATTERSON,

Plaintiff,

-v-

CAPTAIN TIMOTHY JOHNSON,

Defendant.

16 Civ. 3156 (PAE) (RWL)

ORDER

PAUL A. ENGELMAYER, District Judge:

Pro se plaintiff Trent Patterson filed this lawsuit on April 28, 2016. Dkt. 2. On September 15, 2016, Patterson filed his First Amended Complaint. Dkt. 16. On April 17, 2017, following briefing, this Court dismissed the First Amended Complaint without prejudice. Dkt. 44. On May 1, 2017, Patterson filed a Second Amended Complaint. Dkt. 48. On June 2, 2017, Patterson filed a Third Amended Complaint. Dkt. 54. On January 12, 2018, following briefing, this Court dismissed all allegations in the Third Amended Complaint, save an excessive force claim against defendant Captain Johnson. Dkt. 80. The case proceeded to discovery, under the supervision of the Hon. Magistrate Judge Robert W. Lehrburger. On January 22, 2021, this Court referred to Judge Lehrburger Captain Johnson's then-anticipated motion for summary judgment, Dkt. 140, which was filed on March 17, 2021, Dkt. 147. On August 18, 2021, Judge Lehrburger issued his Report and Recommendation to this Court. Dkt. 147 ("Report").

DISCUSSION

In reviewing a Report and Recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the


record.” *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009)); *see also, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

As no party has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Lehrburger’s thorough, well-reasoned, and exceptionally persuasive Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. Because the Report explicitly states that the “parties shall have fourteen days” to object and “failure to file timely objections will result in a waiver of objections and will preclude appellate review,” Report at 24, the parties’ failure to object operates as a waiver of appellate review, *see Caidor v. Onondaga Cnty.*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec’y of Health & Hum. Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)). The Court, therefore, adopts the Report in its entirety.

CONCLUSION

For the foregoing reasons, the motion for summary judgment is granted. The Court declines to issue a certificate of appealability and certifies that any appeal from this order would not be taken in good faith; therefore, *in forma pauperis* status is denied for purpose of an appeal. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). The Clerk of Court is respectfully directed to close the motion pending at docket entry 147, close this case, and mail a copy of this decision to plaintiff at the address on file.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: March 31, 2022
New York, New York